

FILED  
JAMES BONINI  
CLERK

07 JUL -9 PM 1:03

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

TED MARCUM, : CASE NO. CV-02-0425  
PETITIONER, :  
VS. : HONORABLE JUDGE WEBER  
ADULT PAROLE AUTHORITY, :  
RESPONDENT. : MAGISTRATE JUDGE BLACK

NOTIFICATION OF CHANGE OF ADDRESS.,  
AND SUPPLEMENTAL AUTHORITY FOR HABEAS RELIEF

NOW COMES THE PETITIONER, TED MARCUM, WHO  
RESPECTFULLY SUBMITS NOTICE TO THE COURT THAT  
THE PETITIONER IS CURRENTLY INCARCERATED  
AT THE ROSS CORRECTIONAL CAMP, P.O. BOX 7010,  
CHILLICOTHE, OHIO 45601. PLEASE NOTE THIS NEW  
CHANGE OF ADDRESS. PETITIONER ALSO CITES  
A "SUPPLEMENTAL" CASE AUTHORITY IN SUPPORT  
OF GRANTING HIS HIS CORPUS PETITION.

RESPECTFULLY SUBMITTED

Ted Marcum

TED MARCUM # 546-841

(a)

MEMORANDUM

ON JANUARY 9TH, 2006, THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS HELD THAT OHIO APPELLATE COURT RULE 26(B), UPON RAISING "INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL" CLAIMS, HAS NOT BEEN CONSISTENTLY FOLLOWED OR PRACTICED BY THE OHIO SUPREME COURT. THE SIXTH CIRCUIT CITED A NUMBER OF OHIO SUPREME COURT CASES WHICH RULED UPON THE MERITS OF THE CLAIMS PRESENTED, AS OPPOSED TO RULING A PROCEDURAL DEFAULT BASED ON THE "GOOD CAUSE" REQUIREMENT FOR UNTIMELY-FILING APPLICATIONS FOR REOPENING UNDER APPELLATE RULE 26(B). THEREFORE, THE SIXTH CIRCUIT STATED THAT THE FEDERAL DISTRICT COURTS IN OHIO CAN ADDRESS THE MERITS ON PROCEDURALLY DEFAULTED CLAIMS THAT WERE RAISED IN "UNTIMELY FILED" APPLICATIONS FOR REOPENING, UNDER APPELLATE COURT RULE 26(B). SEE: FRANKLIN v. ANDERSON (6TH CIR. 2006), 434 F.3d 412. THE SIXTH CIRCUIT REASONED THAT THE OHIO SUPREME COURT HAS NOT BEEN ENFORCING THE "GOOD CAUSE" REQUIREMENT TO EXCUSE UNTIMELY FILED APPLICATIONS, AND, IN THE ABSCENCE

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OF CONSISTENTLY ENFORCING THE TIME BAR, NOW AUTHORIZES FEDERAL COURTS IN OHIO TO ADDRESS ON THE MERITS, CLAIMS OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL CLAIMS THAT WERE BROUGHT IN AN "UNTIMELY-FILED" APPLICATION FOR REOPENING, THAT ARE NOW RAISED IN FEDERAL HABEAS CORPUS PROCEEDINGS.

IN THE PRESENT CASE, PETITIONER RAISED IN HIS SEVENTH GROUND FOR HABEAS CORPUS RELIEF THAT THE OHIO COURT RULE 26(B), IS NOT AN "ADEQUATE" OR "INDEPENDENT" STATE COURT REMEDY UPON WHICH A FEDERAL COURT MAY RELY UPON TO FORECLOSE HABEAS CORPUS RELIEF BASED ON A "PROCEDURAL DEFAULT" FOR "UNTIMELY FILING" WITHIN THE "NINETY DAY PERIOD." THE RULING IN FRANKLIN, SUPRA, DEMONSTRATES THAT THE OHIO SUPREME COURT HAS NOT CONSISTENTLY FOLLOWED OR ENFORCED THE RULE IN A NUMBER OF CASES. THUS, PETITIONER/MARCUM RESPECTFULLY ASK THE UNITED STATES DISTRICT COURT TO EXCUSE HIS "PROCEDURAL DEFAULT" (UNTIMELY FILED APPLICATION FOR REOPENING) AND PLEASE ADDRESS THE MERITS

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ON ALL SEVEN GROUNDS RAISED IN HIS FEDERAL PETITION FOR HABEAS CORPUS RELIEF.

PETITIONER STATES THAT HE HAS BEEN RECENTLY RETURNED BACK TO PRISON AND HE MORESO NOW, THAN EVER, PRAYS FOR JUDGMENT GRANTING HIM HABEAS CORPUS RELIEF. MOST RECENTLY, PETITIONER FILED A MOTION WITH THE COURT ASKING FOR A "TELEPHONE CONFERENCE" OR AN "EVIDENTIARY HEARING." PETITIONER NEEDS TO SPEAK WITH THE COURT.

RESPECTFULLY SUBMITTED

Ted Marcum

TED MARCUM, #549-841

CERTIFICATE OF SERVICE

THIS IS HEREBY TO VERIFY THAT A TRUE COPY OF THE FORGOING MOTION HAS BEEN SENT TO MR. MARC DANN, OHIO ATTY. GENERAL, AT: STATE OFFICE TOWER, 30 EAST BROAD STREET, COLUMBUS, OHIO 43215, ON THE 5TH DAY OF JULY, 2007, BY REGULAR U.S. MAIL, POSTAGE PREAFFIXED.

Ted Marcum

TED MARCUM, #549-841

ROSS CORRECTIONAL CAMP

P.O. BOX 7010

CHILLICOTHE, OHIO 45601